IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE S.SIRI JAGAN

WEDNESDAY, THE 28TH FEBRUARY 2007 / 9TH PHALGUNA 1928

WP(C).No. 33535 of 2006(P)

PETITIONER:

KOMALAVALLY NARAYANAN, W/O. MOHAN RAJ,
CHITRA NIVAS, ENANTHY, MALAPPURAM.
CLERK KARULAYI KSHEEROLPADAKA SAHAKARANA SANGHAM LTD.NO.F1780

BY ADV. SRI.P.P.JACOB

RESPONDENTS:

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1. KARULAYI KSHEEROLPADAKA SAHAKARANA SANGHAM LTD. NO.F.1780, KARULAI, MALAPPURAM, REP. BY ITS SECRETARY.

2. THE BOARD OF DIRECTORS OF KARULAYI KSHEEROLPADAKA SAHAKARANA SANGHAM LTD. NO.F.1780, KARULAI, MALAPPURAM, REP. BY ITS PRESIDENT.

3. THE DEPUTY DIRECTOR, DIARY DEVELOPMENT, MALAPPURAM.

4. THE SECRETARY TO GOVERNMENT, AGRICULTURE DIARY DEPARTMENT, TRIVANDRUM.

BY ADV. SRI.JOSEPH SEBASTIAN PURAYIDAM
SR. GOVERNMENT PLEADER SRI. P.K. RAVIKRISHNAN

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 28/02/2007, ALONG WITH WPC NO. 1524 OF 2007 WPC NO. 3906 OF 2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

W.P.(C)33535/06

APPENDIX

PETITIONER'S EXHIBITS

EXT.P1: TRUE COPY OF THE MEDICAL CERTIFICATE ISSUED BY THE MEDICAL OFFICER TO THE PETITIONER DATED 31.3.06.

EXT.P2: TRUE COPY OF THE FITNESS CERTIFICATE ISSUED BY THE MEDICAL OFFICER TO THE PETITIONER DATED 1.4.06.

EXT.P3: TRUE PHOTOCOPY OF THE LETTER ISSUED BY THE FIRST RESPONDENT TO THE PETITIONER DATED 3.4.06.

EXT.P4: TRUE COPY OF THE LETTER ISSUED BY THE PETITIONER TO THE FIRST RESPONDENT DATED 4.4.06.

EXT.P5: TRUE COPY OF THE LETTER ISSUED BY FIRST RESPONDENT TO THE PETITINER DATED 5.4.06.

EXT.P6: TRUE COPY OF THE LETTER ISSUED BY THE FIRST RESPONDENT TO THE HUSBAND OF THE PETITIONER DATED 5.4.06.

EXT.P7: TRUE COPY OF THE LETTER ISSUED BY THE PETITIONER TO THE FIRST RESPONDENT DATED 7.4.06.

EXT.P8: TRUE COPY OF THE REPRESENTATION SUBMITTED BY THE PETITIONER'S BEFORE THE THIRD RESPONDENT DATED 10.4.06.

EXT.P9; TRUE COPY OF THE ORDER DIRECTING THE DIARY EXTENTION OFFICER ON 22.5.2006.

EXT.P10: TRUE COPY OF THE ORDER ISSUED BY THIRD RESPONDENT DATED 22.7.06.

EXT.P11; TRUE COPY OF THE ORDER ISSUED BY THE 4TH RESPONDENT DATED14.3.97 20.10.2006.

EXT.P12: TRUE COPY OF THE LETTER ISSUED BY FIRST RESPONDENT TO THE PETITIONER DATED 1.12.06.

RESPONDENTS'EXHIBTIS

EXT.R1(A): TRUE COPY OF THE LETTER DATED 24.02.06 ISSUED BY THE PRESIDENT OF THE 1ST RESPONDENT SOCIETY TO THE DIARY EXTENSION OFFICER NILAMBUR.

EXT.R1(B): TRUE COPY OF THE ORDER PASSED BY THE DIARY EXTENSION OFFICER, NILAMBUR DATED 31.3.2006.

EXT.R1(C): TRUE COPY OF THE REPORT SUBMITTED BY THE SUB COMMITTEE OF THE 2ND RESPONDENT DATED 1.4.06.

EXT.R1(D); TRUE COPY OF THE DECISION OF THE 2ND RESPONDENT IN THE MEETING HELD ON 04.04.2006.

EXT.R1(E): TRUE COPY OF THE ORDER DATED 12/01/07 IN W.P.(C)1524/07 OF THIS HON'BLE COURT

/TRUE COPY/

PA TO JUDGE.

S. SIRI JAGAN, J.

W.P.(C)NO. 33535/06,3906/07 & 1524 OF 2007

DATED THIS THE 28th DAY OF FEBRUARY, 2007

JUDGMENT

The petitioner in W.P.(c)33535/06 and the first petitioner in W.P.(c)3906/07 are the same. In those writ petitions, the grievance of the said petitioner is against the first petitioner in W.P.(c)1524/07, who is the Karulai Ksheerolpadaka Sahakarana Sangham Ltd (herein after referred to as 'Society'). The facts leading to these writ petitions are as follows;

2. Smt. Komalavally Narayanan, the petitioner in W.P.(c) 33535/06 and the first petitioner in W.P.(c)3906/07 (hereinafter referred to as the petitioner) is an employee of the Society. She availed of leave for treatment and reported for duty with a fitness certificate of the Doctor, who treated her. However the first respondent – Society did not allow her to join duty and did not respond to the several representations by the petitioner and to pay her salary arrears. Finally, the petitioner moved the Deputy Director of Diary Development, who passed Ext.P10 order directing the Society to allow the petitioner to join duty, which the Society did not obey, instead they

filed an appeal before the Government and the Government by Ext.P11 order dismissed their appeal. Still the petitioner has not been allowed to join duty. Instead Ext.P12 notice has been issued directing him to show why action should not be taken for not reporting for duty. It is under the above circumstances, the petitioner has filed W.P.(c)33535/06 seeking a direction to the respondents 1 and 2 to implement Exts.P10 and P11 orders of the Deputy Director of Diary Development and the Government and allow her to join duty in the Society, paying her arrears of salary due for the period during which she was kept out of service for no fault of hers.

3. W.P.(c)3906/07 is filed by the said Komalavally and her husband claiming compensation for the defamatory statements made by the Society against the said Komalavally to the effect that she is a mentally incapacitated person.

4. W.P.(c) 1524/07 is filed by the Society challenging Exts.P10 and P11 orders produced in W.P.(c) 33535/06 passed by the Director of Diary Development and the Government.

5. I have heard the counsel on both sides.

6. The contention of the society is that the said Komalavally is mentally ill and that she is behaving inside the office in a manner,prejudicial to the interests of the Society. According to the Society, although disciplinary proceedings were initiated against the said Komalavally and an enquiry report has been obtained, no further action had been taken on the basis of the report on

humanitarian grounds and she was asked to produce a certificate from the Psychiatrist stating that she is not mentally ill. According to the Society, it is in the best interests of the said Komalavally herself and there is no ulterior intention behind the same. Therefore they seek dismissal of the writ petitions filed by the said Komalavally and quashing of Exts.P10 and P11 orders of the Director of Diary Development and the Government directing the Society to allow the said Komalavally to join duty.

7. It is demeaning to a normal person to direct her to produce a medical certificate to the effect that she is not mentally ill. Therefore the Society had no business to issue such a direction to the said Komalavally. No law provides that if the employer suspects the mental illness on the part of the employee, he or she is bound to produce a medical certificate, certifying the mental health of the employee. Therefore I have no doubt in mind that the procedure adopted by the Society is certainly illegal. If the Society had a case that the said Komalavally had committed any misconduct, it was for the Society to initiate disciplinary proceedings against the petitioner. That being so, I do not find any merit in the challenge against the orders of the Deputy Director of Diary Development and the Government directing the Society to permit the said Komalavally to join duty.

8. In the above circumstances, I allow W.P.(c)33535/06 and direct the Society to allow the said Komalavally to join duty

forthwith. She should also be paid salary and service benefits for the period during which the Society had kept her out of employment by not allowing her to join duty.

9. However I am not inclined to consider the claim of the said Komalvally and her husband in W.P.(c)3906/07 for compensation for the alleged defamatory statements made by the Society against the said Komalavally. If the petitioner has any such case, she has to resort to appropriate remedies available to her under the civil law where she can adduce evidence in support of her case.

Accordingly, W.P.(c)3906.07 is dismissed without prejudice to the right of the petitioners therein to agitate their claim before the appropriate civil Court. W.P.(c) 1524/07 challenging the orders of Deputy Director of Diary Development and the Government of Kerala is also dismissed. However the dismissal of the writ petition would not stand in the way of the Society taking appropriate disciplinary proceedings, if they have a case that the said Komalavally has committed any misconduct for which she is to be proceeded against, after complying with the formalities contemplated under law.

S. SIRI JAGAN, JUDGE

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